

## Internal Revenue Service

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August 16, 2006

### Legend

Underlying Trust =

Trusts =

Original Servicer =

Backup Servicer =

State =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Firm A =

Firm B =

Firm C =

Dear \_\_\_\_\_ :

This responds to a letter dated January 13, 2006, and subsequent correspondence submitted on behalf of the Trusts, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an election under section 860D of the Internal Revenue Code (the "Code") to treat the Trusts as Real Estate Mortgage Investment Conduits (REMICs).

### Facts

Underlying Trust was formed as a grantor trust under the laws of State pursuant to a pooling and servicing agreement on Date 1 of Year 1. By the terms of the pooling and servicing agreement, the Original Servicer was to elect to treat a segregated pool of assets consisting of certain home mortgage loans and unsecured consumer loans as a REMIC, to be designated as Trust 1. In addition, the Original Servicer was to further elect to treat the regular interest in Trust 1 as a separate REMIC, to be designated as Trust 2. Pursuant to its duties as the initial tax matters person, the pooling and servicing agreement also required the Original Servicer to prepare and file federal tax returns for Trust 1 and Trust 2 (collectively, the "Trusts") and to cause the elections for the Trusts to be treated as REMICs for federal income tax purposes.

On or about Date 2 of Year 1, the Original Servicer filed voluntary Chapter 11 petitions under Title 11, 28 U.S.C. § 101 *et seq.* In Date 3 of Year 2, the Backup Servicer assumed the Original Servicer's responsibilities under the pooling and servicing agreement. The Backup Servicer requested that the Original Servicer deliver to it all books and records related to the Trusts.

At the time the Backup Servicer assumed its responsibilities, the Year 1 REMIC tax returns should have already been filed for the Trusts. When beginning preparation of the REMIC tax returns for Year 2, the Backup Servicer was unable to locate in the documentation transferred to it from the Original Servicer copies of the Year 1 REMIC tax returns. The Backup Servicer then made repeated inquiries to the Original Servicer about the Year 1 REMIC tax returns.

Because the Original Servicer was in bankruptcy and because of employee turnover caused by the bankruptcy, the Backup Servicer had difficulty in obtaining any further information from the Original Servicer. Finally, sometime at the end of Year 3, the Original Servicer referred the Backup Servicer to Firm A. An attorney at Firm A informed the Backup Servicer that the Original Servicer had consulted the attorney around Date 1 of Year 1. During the consultation, the attorney told the Original Servicer that the filing of REMIC elections for the Trusts was not necessary.

After discovery that REMIC elections had not been made for the Trusts, the Backup Servicer began to consult with Firm B, which informed the Backup Servicer about the

possibility of requesting relief under sections 301.9100-1 and 301.9100-3 of the regulations for a reasonable extension of time for the Trusts to elect to be treated as REMICs. The Backup Servicer initially began discussions with Firm B as to the preparation of a ruling request, but relationship issues arose with Firm B. As a result, at the beginning of Year 4, the Backup Servicer requested Firm C to prepare the ruling request. The delay from that point was attributable to the process of group editing and getting parties to agree on a document to be submitted.

The Trusts make the following additional representations:

1. The request for relief was filed before the failure to make regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in the Trusts having a lower tax liability in the aggregate for all years to which the regulatory election applies than the Trusts would have had if the election had been timely made (taking into account the time value of money).
3. The Trusts did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the Trusts requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, the Trusts did not choose to not file the election.

### Law and Analysis

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under § 860D(a) may elect to be treated as a REMIC for its first taxable year and that such election must be made on the return for its first taxable year. Section 1.860D-1(d)(1) provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066 signed by a person authorized to sign that return. This regulation also provides a reference to section 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) of the regulations provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to section 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year, unless an extension is granted. Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

### Conclusion

Based on the information submitted and representations made, we conclude that the Trusts have satisfied the requirements for granting a reasonable extension of time to allow them to make elections under section 860D of the Code to be treated as REMICs for Year 1 and subsequent taxable years. Therefore, the Trusts are granted a period of time not to exceed 30 days from the date of this letter to submit Forms 1066.

This ruling is limited to the timeliness of the REMIC election of the Trusts. This ruling does not relieve the Trusts from any penalty that they may owe as a result of the failure to timely file Form 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether the Trusts meet the requirements of a REMIC under section 860D(a) of the Code.

No opinion is expressed with regard to whether each Trust's tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the service center where Trusts file their return with instructions that although their Forms 1066 were not timely filed, Trusts are treated as having made timely elections under section 860D(b) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this ruling letter to your authorized representative.

Sincerely,

William E. Coppersmith  
William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)